



October 27, 2000

Ms. Larissa T. Roeder
Assistant District Attorney
County of Dallas
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2000-4178

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 140569.

The Dallas County District Attorney (the "district attorney") received a request for all reports, probable cause statements, and other documents relating to all public lewdness cases made by seven named officers since January 1, 1995; all documents evidencing communications between the City of Dallas and the Texas Alcoholic Beverage Commission related to three named establishments; and all communications between the city and the commission regarding cooperation in law enforcement at sexually oriented businesses. You claim that the requested information is not readily available, that the request is asking you to compile data, and that, because the materials described in the request are not kept in the ordinary course of business, you should not be required to produce them.

We first note that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request, but a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990), 534 (1989). We do not interpret this request to require research or the creation of new information. In addition, when a governmental body is presented with a broad request for information rather than specific records, we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision Nos. 61 at 8, 9 (1990), 31 (1974). We find this request to be sufficiently specific, and you do not inform us of any efforts to consult with the requestor to narrow or clarify the request.

You do not assert that you do not *have* the information. Indeed, the information requested apparently includes information that the district attorney maintains, for example, affidavits for arrest warrants, probable cause statements, and incident reports. The district attorney is required to produce information that it maintains and which it owns or has a right of access to, unless that information is excepted from required disclosure. You do not raise any exceptions to disclosure. You state that you are unable to respond to the request as written because you do not have a method of isolating, identifying, and retrieving the information. The difficulty of complying with a public information request is not a relevant factor in determining whether the responsive information is subject to required public disclosure under the Act. *See, e.g., Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.002 of the Government Code provides that information is “public information” if it is:

collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). You have not explained your assertion that the requested information is not kept in the ordinary course of business. We therefore have no basis to conclude that the requested information is not “public information” subject to the Act. Therefore, the Act does not permit the district attorney to withhold requested information from a requestor based on the fact that the information is not readily available or that complying with the request requires the governmental body to compile information.

As noted earlier, you have not raised any exceptions to disclosure. You also have not provided this office with a representative sample of the requested information. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

Section 552.302 of the Government Code provides that a governmental body's failure to submit to this office the information required in section 552.301(b) or (e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to find that the information must be released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID#140569

Encl. Submitted documents

cc: Mr. Charles J. Quaid
Quaid & Quaid
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Dallas, Texas 75206
(w/o enclosures)